

CASE REPORT

***Martin et al v City of Boise*, 9th U.S. Circuit Court of Appeals, No. 15-35845**

- Homeless persons cannot be penalized for sleeping outdoors, on public property, on the false premise they had a choice in the matter – adequate shelter must be practically available and accessible

I. Case Summary

In response to a significant and growing homeless population, the City of Boise adopted two ordinances aimed at addressing the increased use of public places to sit or sleep. Six homeless people challenged the City Ordinances, alleging the ordinances amounted to Cruel and Unusual punishment under the Eighth Amendment.

After the plaintiffs initiated their suit, the Boise Police Department promulgated a new “Special Order” that prohibited enforcement of either ordinance against any homeless person on public property on any night when no shelter had “an available overnight space.” This Order was implemented through the “Shelter Protocol”, which said that if any shelter in Boise reached capacity on a given night, that shelter had to notify the police by approximately 11pm. The shelter had discretion to determine whether it was full, and the police had no mechanism for gauging whether a shelter was full. If all the shelters were full on the same night, the police had to refrain from enforcing either ordinance. However, because of internal policies, two of the shelters never reported being full. This meant that the Shelter Protocol was never triggered, so the police presumably continued to issue citations under both ordinances.

After a long procedural history, the Ninth Circuit Court of Appeals ultimately held that Boise’s ordinances violated the Eighth Amendment’s ban on cruel and unusual punishment to the extent that the ordinances imposed criminal sanctions against homeless persons for sleeping outdoors on public property when they had no other alternative.

II. Analysis

In *Martin*, the Ninth Circuit traced the history of the Eighth Amendment’s jurisprudence, noting that the caselaw distinguished between punishing people for their status, such as narcotic addiction, and for their conduct, such as public drunkenness. However, the *Martin* decision noted that the issue of “involuntary conduct” remained unresolved, though prior decisions had discussed as a guiding principle that the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one’s status or being.

This guiding principle compelled the court’s conclusion in *Martin* that “the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.”

Citing prior cases, the Ninth Circuit reasoned that “[w]hether sitting, lying, and sleeping are defined as acts or conditions, they are universal and unavoidable consequences of being human.’ Moreover, any ‘conduct at issue here is involuntary and inseparable from status — they are one and the same, given that human beings are biologically compelled to rest, whether by sitting, lying, or sleeping.’ As a result, just as the state may not criminalize the state of being ‘homeless in public places,’ the state may not ‘criminalize conduct that is an unavoidable consequence of being homeless — namely sitting, lying, or sleeping on the streets.’

The Ninth Circuit noted, however, that its decision was to be narrowly interpreted, as the court did not want to be understood as requiring cities to affirmatively provide enough shelter for the homeless or to allow anyone to sit, lie, or sleep anywhere at any time in any place. But the court held that if there is a greater number of homeless persons in a jurisdiction than the number of beds typically available to those persons, local jurisdictions cannot criminalize homeless individuals for involuntarily sitting, lying, and sleeping in public.

III. Conclusion

This case clarifies a city’s scope of authority when adopting and enforcing ordinances that address the consequences arising from an increase in the city’s homeless population. While this case offers some parameters within which a city ordinance must comply, the court emphasized that its holding did not cover people who had access to a shelter but chose not to utilize the opportunity, nor did the court suggest that a local jurisdiction with insufficient shelter space could never criminalize the act of sleeping outside. In fact, the *Martin* court clarified that even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible. The court noted that whether other ordinances are consistent with the Eighth Amendment will depend, as it did in this case, on whether they punish a person for lacking the means to live out the ‘universal and unavoidable consequences of being human’ in the way the ordinance prescribes.

Notwithstanding *Martin*, cities may likely still adopt and enforce carefully drawn local ordinances that prohibit certain activities such as sleeping in public places, so long as shelter space is actually, and practically, available. However, cities should exercise caution in this context. We strongly advise consulting with your City Attorney to review any existing ordinances that criminalize sitting, lying and/or sleeping in public areas before enforcing them. Please feel free to contact our office for assistance.

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